No._____

In The

Supreme Court of the United States

STEPHANIE JONES,

Petitioner,

v.

JEREMY EDER, J. DALE, B. BAKER, R. NG, and FORT BEND COUNTY,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Fourth Amendment, the Supremacy Clause, or the Interstate Commerce Clause prohibit state actors from warrantlessly seizing the People and their lawfully prescribed and possessed prescription medications inside their own homes based on "possession alone"?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Stephanie Jones respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the Fifth Circuit (App., *infra*, 1a-4a) and denial of rehearing en banc (App., *infra,* 161a-162a) are both unreported. The district court's memorandums, recommendations, and orders (App., *infra*, 5a-160a) are also unreported.

JURISDICTION

The judgment of the court of appeals was filed on October 2, 2019 and rehearing was denied December 12, 2019. This Court's jurisdiction rests on 28 U.S.C. § 1254 (1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1983 provides (in relevant part):

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

> Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress…

21 U.S.C. § 844 (the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970) provides (in relevant part)

> It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this subchapter or subchapter II.

Texas Health and Safety Code Section 481.117 (a) provides:

> "Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 3, unless the person obtains the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice."

STATEMENT

The courts below concluded Texas law permits the seizure of the People and their prescription pills based on "possession alone" inside their homes, even when said pills are possessed pursuant to legal prescriptions.[1] Ms. Jones was charged with felony possession of a controlled substance in a school zone and her legally possessed personal property has not been returned. The rulings in this case continue to authorize Texas officers' warrantless seizures of both the People and their controlled substances even when they have a prescription therefor and are committing no crime inside their own homes.[2]

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[1] See App. 31a ("As possession alone was sufficient to give rise to probable cause that Ms. Jones violated 481.117 (a), it is immaterial that Defendant Eder lacked any information that could have given him reason to believe that Ms. Jones did not have valid prescriptions for the pills."); see also App. 163a, at ¶ 17 ("The only elements necessary to support a criminal charge are a person's possession of a dangerous drug.") (citations omitted).

[2] See App. 127a-128a ("To compound matters, Defendant Eder admitted that he had filed several cases based on his understanding that Texas law allowed him 'to arrest a person who[m] [he] found possessing hydrocodone or alprazolam that was not kept in the prescription bottle in which it was dispensed that identified the individual the drug was prescribed for and delivered to.'") (alterations in the original). But see *Burnett v. State*, 488 S.W.3d 913, 920 (Tex. App.—Eastland 2016, pet. granted) ("At oral argument, the State represented that it was illegal to carry prescribed medications outside of its original container as it was delivered by the pharmacist. We have not been able to locate such a law."), *aff'd*, 541 S.W.3d 77; cf. Tex. Health & Safety Code § 481.074 (j)(2) (prohibiting practitioners from permitting patients to leave hospitals with controlled

FACTUAL BACKGROUND

Respondent Eder (a member of Respondent Fort Bend County's Narcotic Task Force) entered Ms. Jones's home pursuant to a search warrant for cocaine and "any illicit contraband".[3] After Ms. Jones was removed from her home,[4] Respondent Eder conducted a search for cocaine and found none. During said search, he saw one and one-half pills (hydrocodone and alprazolam) outside of their respective pill bottles inside Ms. Jones's bedroom; he swore that upon seeing them, "it was immediately apparent…the pills were either controlled substances, possibly cocaine, or dangerous drugs; both of which are illicit contraband."[5]

Respondent Eder then (1) called poison control to identify the immediately apparent contraband,[6] (2) learned the pill was hydrocodone, (3) believed it was an "illegal drug" based on Texas Health and Safety

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substances unless "the substance is in a properly labeled container[.]") (the only time such language is used in all of Texas law).

[3] App. 146a.

[4] App. 13a.

[5] But see App. 35a, at n. 63 ("In fact, in the twenty-eight years as a U.S. Magistrate Judge reviewing complaints, search warrants, and other related criminal filings, the court has never heard that cocaine or crack cocaine has been pressed into tablet form.").

[6] See App. 34a ("I [Eder] was unable to determine the pills were not cocaine until after I discovered the pills were controlled substances hydrocodone and alprazolam, through consultation by telephone with representative of a poison control center.").

Code Section 481.117,[7] (4) performed a secondary search of Ms. Jones's home outside the limited scope of the warrant[8] "for labels or pill containers for the pills" that he found,[9] (5) seized both the hydrocodone and alprazolam,[10] and (6) arrested Ms. Jones without (a) telling her the charges against her or (b) asking her (or anyone else) if anyone had prescriptions for the pills.[11]

Ms. Jones had a prescription for the hydrocodone while her father (who lived with her at the time) had a prescription for the alprazolam.[12] Ms. Jones was not informed of the charges against her until after she was indicted by a grand jury. She was then prosecuted for felony possession of a controlled substance in a school zone (because she lived across the street from a school) for eight months until the charges were dismissed;[13] she also lost her job as a

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[7] App. 147a. See also App. 125a, at n. 90 ("Defendants Baker and Dale…testified that Section 481.117 applied to the pills found in Plaintiff's residence.").

[8] See generally App. 146a.

[9] App. 14a ("Defendants Eder and Ng also searched the residence for labels or pill containers for the pills but found none."). See also App. 51a (same) and App. 94a (same).

[10] See App. 34a ("Since the pills were controlled substances that [Ms. Jones] apparently possessed illegally, I [Eder] believed probabl[e] cause existed for me to seize the controlled substances.").

[11] App. 126a-127a.

[12] App. 2a; see also App. 17a-18a.

[13] Compare App. 2a (the search occurred on January 31, 2014) and App. 16a (Ms. Jones was indicted on February 17, 2014) with *ibid.* (the charges were dismissed on October 20, 2014).

school bus driver during said prosecution and lost her car to repossession as a result.

Respondents argued their seizures of Ms. Jones and her hydrocodone were reasonable under the Fourth Amendment because (*inter alia*): (1) "[T]he only elements necessary to support a criminal charge are a person's possession of a dangerous drug";[14] (2) prescriptions are affirmative defenses (rather than the *sine qua non* of the offense);[15] and (3) "it is a crime to possess *any* prescription medication outside a pill container that identifies the drug and who it was prescribed for, and dispensed to[.]"[16]

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[14] App. 163a; see also App. 85a ("As possession alone was enough to give Defendant Eder probable cause existed to believe that Plaintiff violated Section 481.117(a), Plaintiff has failed to raise a fact issue on her constitutional claim of false arrest against Defendant Eder."). But see App. 130a ("In fact, the court has determined that the text of Section 481.117(a) **leaves no debate** that the crime of possession of a controlled substance is committed, not by possession alone, but by possession without a prescription.") (emphasis added).

[15] App. 163a at ¶ 17 ("[T]he State – and therefore an investigating police officer - is not obligated to even respond **to the defense** [of having a prescription] until after it is affirmatively raised by a person accused of illegally possessing a dangerous drug.") (emphasis added).

[16] App. 165a at ¶ 12 (emphasis in the original). See also App. 33a ("I [Eder] had been trained that both controlled substances and dangerous drugs are illegal to possess in the circumstances I found these two pills so probable cause supported my search…"); App. 35a (Eder had been trained that he "had legal authority to seize the controlled substance under the plain view doctrine enunciated by the United States Supreme Court."); and

Ms. Jones's hydrocodone has not been returned[17] and Respondents' disclosures failed to identify anyone with knowledge of where Ms. Jones's pill is located.

App. 126a-127a (Eder filed several criminal cases on similar facts).

[17] See App. 139a ("At the time this lawsuit was filed, Plaintiff had not recovered either the pills or the money seized during the search.").

PROCEEDINGS BELOW

Ms. Jones sued Respondents pursuant to 42 U.S.C. § 1983 alleging they (in pertinent part) violated her clearly established rights to remain free from unreasonable seizures of her and her effects inside her home.[18] The trial court partially denied Respondents' motion to dismiss[19] and concluded: (1) the pills were not "illegal drugs" under Texas Health and Safety Code Section 481.117;[20] (2) the pills were not "'contraband' as defined by the warrant";[21] and (3) valid prescriptions are not affirmative defenses "that may be disregarded when an officer is assessing the legality of possessing one hydrocodone pill found on the nightstand in that person's residence."[22]

The court subsequently denied (in part) Respondents' motions for summary judgment and concluded that:

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18 See App. 139a-140a.

19 See generally Appendix G, App. 137a-160a.

20 App. 147a ("Defendants argue that the pills were 'illegal drugs' based on Section 481.117 of the Texas Health and Safety Code and that probable cause for Plaintiff's arrest was therefore 'necessarily extant.'

The court does not agree.").

21 App. 148a ("Nor are they [the pills] 'contraband' as defined by the warrant.").

22 App. 150a; see also App. 60a (same) and 103a (same). Cf. 150a, at n. 27 ("If this were the case [that prescriptions were affirmative defenses that could be disregarded under the circumstances], then many citizens risk a warrantless arrest for placing their prescribed medications in a weekly pill container.").

(1) "Defendant Eder's clear misinterpretation of Texas law clouded his investigation and probable cause assessment";[23]

(2) "[A] reasonable jury could conclude these facts are insufficient to establish even arguable probable cause to believe that a criminal offense was being committed";[24]

(3) "[T]he text of Section 481.117(a) leaves no debate that the crime of possession of a controlled substance is committed, not by possession alone, but by possession without a prescription";[25]

(4) "[T]he warrant did not authorize the seizure of the alprazolam and hydrocodone pills";[26]

(5) "[A] fact issue precludes the court's deciding the matter of whether Defendant Eder had probable cause to believe Plaintiff was committing a crime";[27] and

(7) "[T]he court also cannot decide whether the seizure of the pills was constitutional without first allowing the jury to do its job."[28]

The court also entered an order which stated: "Plaintiff may file a motion for summary judgment on the constitutionality of Texas Health and Safety Code § 481.117(a), as applied."[29]

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23 App. 128a.

24 App. 128a.

25 App. 130a; see also App. 133a, at n. 102.

26 App. 133a; see also App. 19a, App. 35a, App. 59a, App. 86a, and App. 102a (same).

27 App. 134a.

28 App. 134a.

29 App. 45a.

Respondent Eder then filed a second motion for summary judgment, "switche[d] statutes",[30] and argued "Section 481.184(a) places the burden on the [criminal] defendant to negate any exemption or exception allowed by the Texas Controlled Substances Act."[31] The magistrate judge then concluded that:

> (1) under *Threlkeld v. Texas*,[32] "possession alone was enough to give Defendant Eder probable cause existed to believe [sic] that Plaintiff violated Section 481.117(a)";[33] and
>
> (2) a ruling on the constitutionality of Texas Health and Safety Code Section 481.117(a) as applied would constitute an impermissible advisory opinion.[34]

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30 App. 83a. See also App. 47a ("The original Memorandum, Recommendation, and Order is amended in light of Defendant Eder's change of course from the reliance on inapplicable state law to the citation of applicable state law that alters the court's qualified-immunity analysis.").

31 App. 83a.

32 558 S.W.2d 472, 473 (Tex. Crim. App. 1977).

33 App. 85a ("Faced with this applicable law [*Threlkeld*], the court must reconsider its analysis of probable cause…As possession alone was enough to give Defendant Eder probable cause existed to believe [sic] that Plaintiff violated Section 481.117(a), Plaintiff has failed to raise a fact issue on her constitutional claim of false arrest against Defendant Eder."). But see *Baumgart v. State*, 512 S.W.3d 335, 342 (Tex. Crim. App. 2017) (observing that the relevant portion of *Threlkeld* is dicta and "not binding authority").

34 App. 26a; see also App. 4a at n.4 (affirming same).

On March 21, 2019, the trial court granted summary judgment in Respondents' favor.[35]

Ms. Jones filed a Notice of Appeal on April 8, 2019 and argued (in part), "The trial court erroneously granted summary judgment to Appellee Eder for his seizure of Ms. Jones'[s] pill." No Respondent addressed Ms. Jones's allegation that Eder's seizure of her hydrocodone was constitutionally prohibited.

The panel issued its per curiam unpublished opinion (and revised opinion) on October 2, 2019; neither version addressed Ms. Jones's argument concerning the seizure of her pill. Ms. Jones's Petition for rehearing en banc was denied on December 12, 2019.

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[35] See App. 3a-4a; see also App. 5a-8a.

REASONS FOR GRANTING THE PETITION

This Honorable Court should grant the instant Petition under Supreme Court Rule 10(c) because the Fifth Circuit has decided an important question that has not been, but should be, settled by this Honorable Court, *i.e.,* does the United States Constitution prohibit state actors from warrantlessly seizing the People and their legally possessed controlled substances inside their own homes?

A. The Fourth Amendment prohibited Respondents' seizures of Ms. Jones and her prescription pill because she had a prescription therefor.

The Fourth Amendment protects the People inside their homes from unreasonable government intrusions.[36] Warrantlessly searching the People's

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[36] *Kyllo v. United States*, 533 U.S. 27, 31 (2001) ("The Fourth Amendment provides that '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.' 'At the very core' of the Fourth Amendment 'stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.' With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no."); see also *id.,* at 37 ("In the home, our cases show, all details are intimate details, because the entire area is held safe from prying government eyes."); *Frisby v. Schultz*, 487 U.S. 474, 484 (1988) ("Our prior decisions have often remarked on the unique nature of the home, 'the last citadel of the tired, the weary, and the sick,' and have recognized that '[p]reserving the sanctity of the home, the one retreat to which men and women can repair to escape from the tribulations of their

homes for medical information, seizing the People therein, and seizing their controlled substances when they have prescriptions therefor (and there is no probable cause to believe otherwise) is unreasonable,[37] particularly in light of Respondent

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daily pursuits, is surely an important value.'") (quoting *Gregory v. Chicago*, 394 U. S. 111, 125 (1969) (BLACK, J., concurring) and *Carey v. Brown*, 447 U.S. 455, 471 (1980)); and *United States v. Orito*, 413 U.S. 139, 142 (1973) ("The Constitution extends special safeguards to the privacy of the home, just as it protects other special privacy rights such as those of marriage, procreation, motherhood, childrearing, and education.") (citing *Eisenstadt v. Baird,* 405 U. S. 438, 453-54 (1972); *Loving v. Virginia,* 388 U. S. 1, 12 (1967); *Griswold v. Connecticut,* 381 U. S. 479, 486 (1965); *Prince v. Massachusetts,* 321 U. S. 158, 166 (1944); *Skinner v. Oklahoma,* 316 U. S. 535, 541 (1942); and *Pierce v. Society of Sisters,* 268 U. S. 510, 535 (1925)); cf. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006) ("[T]he ultimate touchstone of the Fourth Amendment is 'reasonableness[.]").

[37] See, *e.g., Agnello v. United States*, 269 U.S. 20, 33 (1925) ("[B]elief[s], however well founded, that an article sought is concealed in a dwelling house furnishes no justification for a search of that place without a warrant. And such searches are … unlawful notwithstanding facts unquestionably showing probable cause."). See also *Olvera v. Alderete*, No. 4:10-CV-2127, 2010 WL 4962964, *30-31 (S.D. Tex. Dec. 1, 2010) (unpub.) ("[W]hen Defendant…encountered [Plaintiff] at his home, it was clearly established that an individual had a reasonable expectation of privacy in their home and that a warrantless search of a home was presumptively unreasonable absent consent or exigent circumstances.") (Ellison, J.) (citing (*inter alia*) *Arizona v. Hicks*, 480 U.S. 321 (1987) and *United States v. Menchaca-Castruita,* 587 F.3d 283, 289 (5th Cir. 2009)).

Eder's admission that Ms. Jones had a property interest in her pill.[38] A seizure is a seizure, even if it is just a prescription pill. See *Hicks*, 480 U.S. at 325 ("A search is a search, even if it happens to disclose nothing but the bottom of a turntable."). Therefore, the Fourth Amendment plainly prohibited Respondents' seizures of Ms. Jones and her prescription pill inside her home.

B. The Supremacy Clause prohibited Respondents' seizures of Ms. Jones and her prescription pill because she had a prescription therefor.

"[A] state statute is void to the extent that it actually conflicts with a valid federal statute[.]" *Edgar v. MITE Corp.*, 457 U.S. 624, 631 (1982). The Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 expressly authorizes the People to possess controlled substances when they are "obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice."[39] The Fifth Circuit concluded "Jones had a valid prescription for hydrocodone, and her father, who lived in the home, had a valid prescription for Xanax."[40] Therefore, Ms. Jones legally possessed her hydrocodone under federal law and Respondents' seizure of Ms. Jones and her

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[38] App. 167a [Excerpt from Respondent Eder's appellate brief] (an owner's interest in items in plain view are "possession and ownership") (quoting *Texas v. Brown*, 460 U.S. 730, 738-39 (1983).

[39] *Wright v. State*, 891 S.W.2d 197, 200 (Tex. Crim. App. 1998) (citing 21 U.S.C. § 844).

[40] App. 2a; see also App. 17a-18a.

hydrocodone were prohibited by the Supremacy Clause.

Respondents' seizures specifically run afoul of conflict preemption based on a positive conflict between the Federal Controlled Substances Act and Respondents' application of Texas Health and Safety Code section 481.117 (a). Federal law permits the People to obtain controlled substances pursuant to a prescription while Respondents contend their seizures of Ms. Jones and her hydrocodone were justified under Texas law because, "[T]he only elements necessary to support a criminal charge are a person's possession of a dangerous drug."[41] Although the Federal Controlled Substances Act contains a non-preemption clause, it is inapplicable because there is a "positive conflict" between the federal statute and Respondents' application of Texas' similarly-worded statute. See 21

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[41] App. 163a ("The only elements necessary to support a criminal charge are a person's possession of a dangerous drug. *See* TEX. HEALTH & SAFETY CODE § 483.071; *Swain v. Hutson*, 2011 Tex. App. LEXIS 10078 **29-31, 2011 WL 6415118 (Tex. App.—Fort Worth 2011, no pet.); *Kelly v. State*, 2010 Tex. App. LEXIS 2573 **10-12; 2010 WL 1478907 (Tex. App.—Beaumont, 2010, no pet.). While having obtained the drug from a pharmacist or a practitioner who dispensed the drug, in a proper container with an appropriate label, to the person who possessed it for his personal use is a *potential defense* the possessor could raise in a criminal prosecution, TEX. HEALTH & SAFETY CODE §§ 483.041-483.042 and *Kelly supra at* *10, the State – and therefore an investigating police officer - is not obligated to even respond to the defense until after it is affirmatively raised by a person accused of illegally possessing a dangerous drug. TEX. HEALTH &SAFETY CODE § 483.").

U.S.C. § 903;[42] compare 21 U.S.C. § 844[43] with Tex. Health & Safety Code § 481.117(a);[44]

Respondent Eder contended the federal and state statutory schemes differ "substantially"[45] and he

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[42] "No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together."

[43] "It shall be unlawful for any person knowingly or intentionally to possess a controlled substance **unless** such **substance** was **obtained directly**, or pursuant to **a valid prescription or order**, from a **practitioner**, while **acting in the course of his professional practice**, or except as otherwise authorized by this subchapter or subchapter II of this chapter." (emphases added).

[44] "Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 3, **unless** the person **obtains** the **substance directly** from or under **a valid prescription or order** of a **practitioner acting in the course of professional practice**." (emphases added).

[45] Specifically, Respondent Eder's "Objections to Magistrate Judge's Report Regarding Defendant Eder's Motion for Summary Judgment" avers:

> While the undersigned attorney acknowledges he should have sooner provided the Magistrate Judge with additional legal authorities, that more fully identified the basis for Lieutenant Eder's reliance on Texas criminal law which substantially differs from federal criminal law, Lieutenant Eder is not responsible for his

should be judicially estopped from contending otherwise for purposes of this Petition. Respondents' misapplication of Texas law imposes a requirement that is not a "neutral and uniformly applicable rule of procedure; rather, it is a substantive burden imposed only upon those who seek redress for injuries resulting from the use or misuse of governmental authority."[46] Therefore, Respondents' seizure of Ms. Jones and her pill was preempted by federal law and unconstitutional.

C. The Interstate Commerce Clause prohibited Respondents' seizures of Ms. Jones and her prescription pill because they are based on a misapplication of law that is out of line with the requirements of many other states.

Respondents contend their arrest of Ms. Jones was justified because, "[T]he only elements necessary to support a criminal charge are a person's possession of a dangerous drug."[47] Under Respondents' application of Texas law, the People are subject to arrest (and having their prescription pills seized) every time they possess controlled substances; these charges are upgraded to a felony if they are in a school

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lawyer's delay in providing additional briefing fully addressing those differences in federal and Texas criminal law. Certainly, Lieutenant Eder's attorney's delay does not render Lieutenant Eder's testimony unbelievable or incredible.

46 *Felder v. Casey*, 487 U.S. 131, 141 (1988).

47 App. 163a, at ¶ 17.

zone.[48] Respondents' judicially approved misapplication of Texas law exposes countless people (including interstate truck drivers delivering controlled substances to hospitals and pharmacies) to unreasonable seizures and creates an untenable burden on interstate commerce.

Respondents' misapplications of Texas law[49] and seizures based upon "possession alone" are "out of line with the requirements" of many other States and "place a great burden of delay and inconvenience on those interstate motor carriers entering or crossing its territory." *Bibb v. Navajo Freight Lines*, 359 U.S. 520 (1959).[50] Respondents' misapplications of Texas law

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[48] See Tex. Health & Safety Code § 481.134 (e).

[49] See App. 130a ("[T]he text of Section 481.117(a) leaves no debate that the crime of possession of a controlled substance is committed, not by possession alone, but by possession without a prescription.").

[50] See also *Safford Unified School Dist. No. 1 v. Redding*, 557 U.S. 364, 394 (2009) (THOMAS, J., concurring in the judgment in part and dissenting in part) (citing Ariz.Rev.Stat. Ann. § 13-3406(A)(1) (West Supp.2008) ("A person shall not knowingly ... [p]ossess or use a prescription-only drug unless the person obtains the prescription-only drug pursuant to a valid prescription of a prescriber who is licensed pursuant to [state law]") and *id.*, at n. 5 ("Arizona's law is not idiosyncratic; many States have separately criminalized the **unauthorized** possession of prescription drugs.") (emphasis added) (citing Mo.Rev.Stat. § 577.628(1) (Supp.2008) ("No person less than twenty-one years of age shall possess upon the real property comprising a public or private elementary or secondary school or school bus prescription medication without a valid prescription for such medication"); Utah Code Ann. § 58-17b-501(12) (Lexis 2007) ("'Unlawful conduct' includes: using a prescription drug ... for himself

are even more unconstitutional than *Bibb* because it both (1) converts a state law with a *mens rea* requirement (see Tex. Health & Safety Code § 481.117(a)) into a strict liability crime contrary to federal law (see 21 U.S.C. § 844) and (2) applies to the People and their lawfully possessed personal property even when they are inside their own homes and there is no probable cause to believe they are committing a crime.[51] Finally, the People's clearly established constitutional right to remain silent is unacceptably denigrated if they are now forced to abandon it inside their own homes (even when they know the contraband identified in the warrant would not be found) in the hopes of correctly guessing the justifications for their arrests.[52]

CONCLUSION

Governmental seizures of the People and their legally possessed property inside their own homes are constitutionally prohibited, especially when the seizure is unrelated to the warrant and the property is not contraband. Permitting warrantless seizures of

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that was not lawfully prescribed for him by a practitioner"); Ala.Code § 34-23-7 (2002); Del.Code Ann., Tit. § 16, § 4754A(a)(4)(Supp.2008); Fla. Stat. § 499.005(14) (2007); and N.H.Rev.Stat. Ann. § 318.42(I) (Supp.2008)).

[51] App. 128a ("[A] reasonable jury could conclude these facts are insufficient to establish even arguable probable cause to believe that a criminal offense was being committed.").

[52] See App. 127a. ("[S]he [Ms. Jones] had no opportunity to provide that information [concerning her prescription] or any reason to believe that Defendant Eder needed that information.").

the People and their legally possessed controlled substances based on "possession alone" would unreasonably and unnecessarily (1) create ambiguities concerning property and privacy rights inside the People's homes; (2) expose those residing in and traveling through Texas to criminal prosecution simply for having (a) medical conditions that are treated with legally obtained controlled substances or (b) occupations which require them to deliver such substances; and (3) deprive the People of access to potentially life-saving property based on officers' heretofore impermissible discretion.[53] These outcomes remain precluded by (*inter alia*) the text of the Fourth Amendment, the Supremacy Clause (via conflict preemption), and the Interstate Commerce Clause.

The Court should grant the petition.

Respectfully submitted,

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[53] See *Stanford v. State of Tex.*, 379 U.S. 476, 485 (1965); see also *Johnson v. United States*, 333 U.S. 10, 13–14 (1948); *Arizona v. Gant,* 556 U.S. 332, 345 (2009); and *Malley v. Briggs,* 475 U.S. 335, 352 (1986) (POWELL, J., concurring) (citing *Leach v. Three of the King's Messengers*, 19 How.St.Tr. 1001, 1027 (1765), quoted in *United States v. United States District Court*, 407 U.S. 297, 316, 92 S.Ct. 2125 2136, 32 L.Ed.2d 752 (1972)).